

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
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Rockville, Maryland 20850
(240) 777-6600

www.montgomerycountymd.gov/content/council/boa/board.asp

Case No. S-2606

PETITION OF CONNIE SNYDER

OPINION OF THE BOARD

(Public Hearing Date: May 21, 2004)

(Opinion Adopted July 14, 2004)

(Effective Date of Opinion: July 28, 2004)

Case No. S-2606 is an application for a special exception pursuant to Section 59-G-2.00 (Accessory Apartment) of the Zoning Ordinance to permit an existing accessory apartment. Pursuant to the authority in Section 59-A-4.125 of the Zoning Ordinance, the Hearing Examiner for Montgomery County convened a hearing on the application on May 21, 2004, and on June 18, 2004, issued a Report and Recommendation for approval of the special exception.

The subject property is Lot 67, Block F, Fairview Estates Subdivision, located at 12600 Billington Road, Silver Spring, Maryland, 20904, in the R-90 Zone.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on July 14, 2004. After careful consideration and a review of the record in the case, the Board adopts the Hearing Examiner's Report and Recommendation and **grants** the special exception, subject to the following conditions:

1. The Petitioner is bound by her testimony and exhibits of record, to the extent that such testimony and evidence are identified in the Hearing Examiner's Report and Recommendation and in the opinion of the Board.
2. The accessory apartment may be inhabited by no more than two persons.
3. The range/stove top must be connected and operational.

On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 28th day of July, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS

Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF CONNIE SNYDER:

	*	
Petitioner	*	
	*	Board of Appeals Case No.
S-2606		
Connie Snyder	*	(OZAH Referral No. 04-35)
	*	
For the Petition	*	
	*	
Barbara Foresti, Department of Housing	*	
and Community Affairs	*	
Ronald Feaster, Housing Code Inspector	*	
Department of Housing and	*	
Community Affairs	*	

Before: Françoise M. Carrier, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

I. STATEMENT OF THE CASE

Petition No. S-2606, filed on January 30, 2004, seeks a special exception, pursuant to §59-G-2.00 of the Zoning Ordinance, to permit an accessory apartment use in a single-family residential structure located at 12600 Billington Road, Silver Spring, Maryland. The subject property is designated Parcel 67, Block F in the Fairview Estates Subdivision and is zoned R-90 (Residential, one-family detached) (Tax Account No. 16-05-00339512).

Technical Staff at the Maryland-National Capital Park and Planning Commission reviewed the petition and, in a memorandum dated May 17, 2004 (Exhibit 15), recommended approval of the petition with conditions.¹ The Department of Housing

¹ The Staff Report is liberally quoted and paraphrased in Part II of this report.

and Community Affairs (“DHCA”) inspected the property on May 7, 2004, and stated in a memorandum dated May 18, 2004 (Exhibit 14) that no deficiencies were found.

A public hearing was convened following proper notice on May 21, 2004 at which testimony was presented in favor of the petition by the Petitioner and DHCA staff. No testimony was offered in opposition to the special exception. The record closed on the same date.

II. BACKGROUND

A. The Subject Property

The subject property is a corner lot located 12600 Billington Road in Silver Spring, at the southwest corner of the intersection of Billington Road and Laurie Drive, approximately two blocks south of East Randolph Road. The property is roughly square in shape. It measures 15,035 square feet and has approximately 107 feet of street frontage along Billington Road.² The property is developed with a split-level, brick and siding dwelling built in 1960 that contains roughly 2,222 square feet. A one-story addition, roughly 30 feet by 30 feet, was added to the rear of the garage in 1989, and shares one common wall with the main dwelling. The Petitioner and her late husband used the addition as an office, and the Petitioner now seeks to use it as an accessory apartment. The main entrance to the proposed apartment is located on the side of the house, behind the garage, and has the appearance of a side entrance into the dwelling. The apartment also has a rear entrance leading to a patio behind the house.

The subject property is mostly flat and is well landscaped, with a wide array of mature trees as well as various shrubs and flowers. The Paint Branch Stream Valley Park is adjacent to the south, giving the property a very scenic setting. The

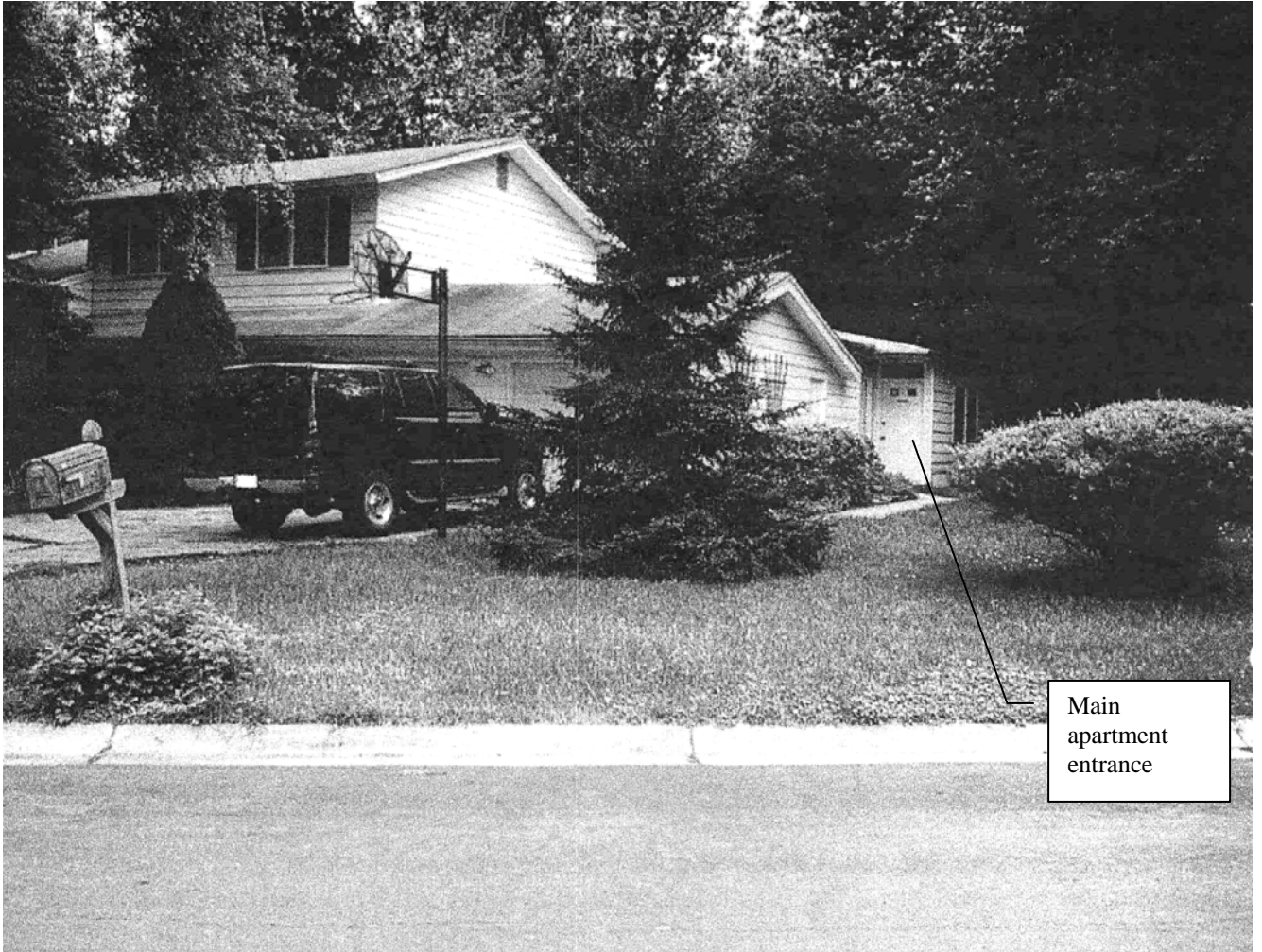
² Technical Staff provided the street frontage measurement along Billington Road. The Hearing Examiner notes that, based on the vicinity map reproduced on page 6, the property appears to have roughly the same amount of street frontage on Laurie Drive as on Billington Road.

house is set back approximately 31 feet from Laurie Drive and 22.5 feet from Billington Road. A variance was approved in 1967 permitting a 7.5-foot encroachment into the 30-foot setback from Billington Road for a garage. The property has access to Billington Road via an asphalt driveway that measures 20 feet in width and 28 feet in depth. Including the addition, the dwelling is set back 30 feet from the rear lot line and 13 feet from the side lot line.

As described by in the Staff Report, the major doorways and pathways to the subject site are well lit, but not in an obtrusive manner. The front of the house has lights on either side of the main door at a height of about six feet, as well as driveway lighting. Both entrances to the apartment, on the side and rear of the house, are lit. In addition, there is a flood light on the rear of the apartment.

The photograph below shows the front and side of the house, including the entrance to the accessory apartment. A house location plan showing the location of the building on the site, as well as general landscaping locations, is reproduced on page 4. A floor plan showing lighting locations is reproduced on page 5.

Photograph of Front and Side of House, Ex. 17

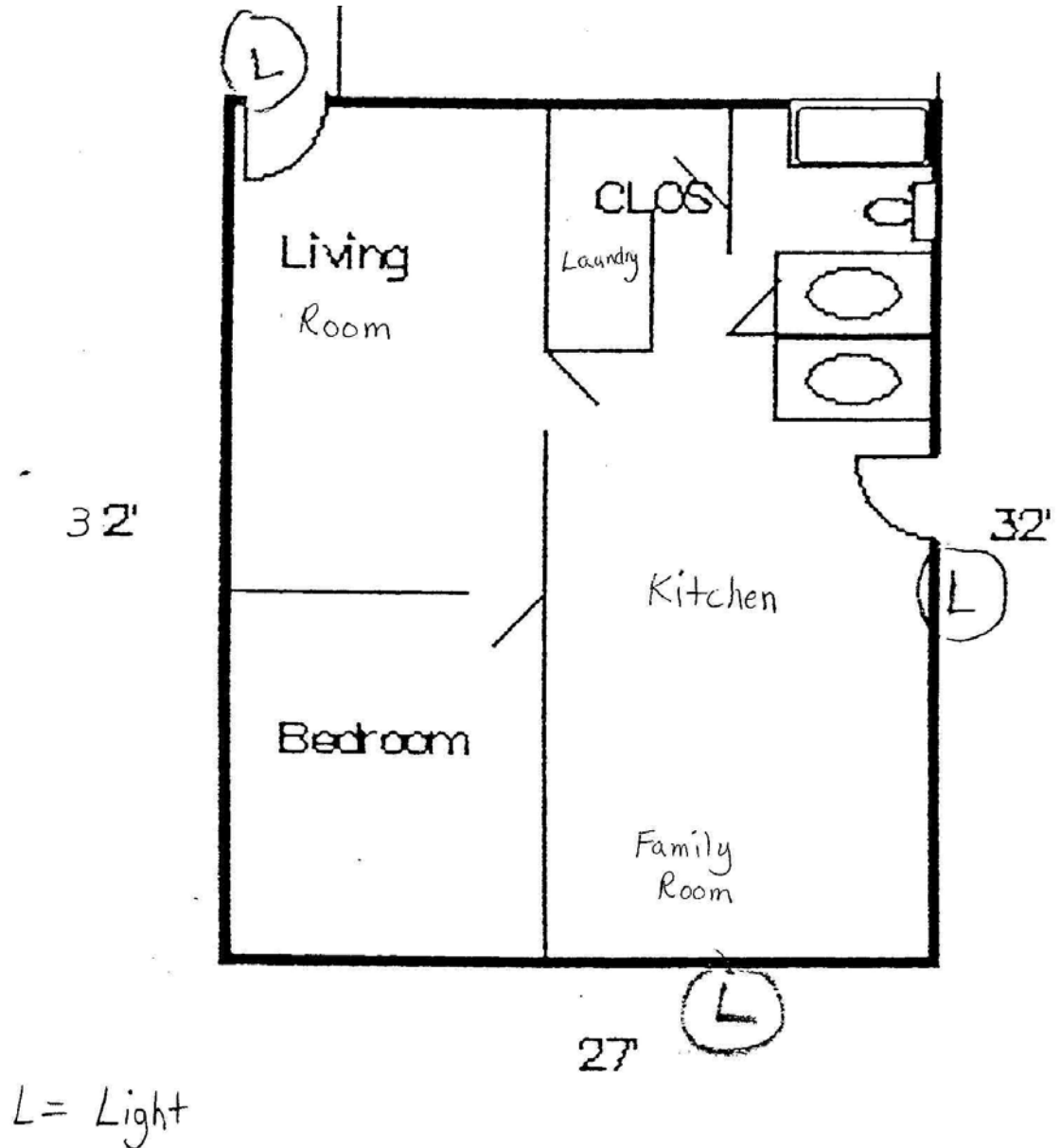


Main
apartment
entrance

House Location Plan/Landscape Plan, Ex. 5

----- HAVE PERSONALLY SURVEYED THE ABOVE PROPERTY BY TO DATE 1961. NAME

Floor Plan/Lighting Plan, Ex. 7



B. The Neighborhood and its Character

Technical Staff defined the general neighborhood of the subject property as the area bounded on the north by East Randolph Road, on the west by Rigdale Terrace, and on the east and south by Paint Branch Stream Valley Park. The neighborhood as thus described is classified entirely in the R-90 Zone, and is fully

developed with single-family, detached homes. DHCA defined the relevant neighborhood slightly more broadly, extending a few blocks farther west to Tamarack Road and Broadmore Road. In this instance, the Hearing Examiner finds Technical Staff's recommendation persuasive. Given the limited impacts of the proposed accessory apartment, a limited neighborhood size is appropriate.

The majority of the residences on Billington Road and Laurie Drive have driveways and attached garages or carports. Technical Staff and DHCA report that there are no existing, approved accessory apartments in the general neighborhood (under either definition). Technical Staff did not report on the existence of other special exceptions, but the zoning map identifies two special exceptions in the immediate area. Research by the Hearing Examiner's staff indicates that S-1024, which permitted a child day care center across Laurie Drive from the subject property, was revoked in 1999 due to abandonment. S-1694 was granted in 1987 to approve a home occupation (roofing contractor) at the southwest corner of Billington Road and Mullins Street. A neighborhood map, Exhibit 20, is shown below.



C. Master Plan

The subject property is located within the area covered by the 1997 *White Oak Master Plan* (the "Master Plan"). The Master Plan does not specifically address the subject property or accessory apartments, although it supports the existing R-90 zoning for the property, which permits accessory apartments by special exception. Technical Staff opines that the proposed use is consistent with the Master Plan.

D. Proposed Use

As noted above, the Petitioner seeks to use a 30 x 30 addition at the rear of her home as an accessory apartment. She has undertaken all the necessary

renovations to turn the space into a dwelling unit, with the exception of hooking up the stove top. As shown on the floor plan reproduced on page 5, the proposed accessory apartment consists of a bedroom, a living room, a kitchen/family room, a bathroom and a laundry area. Technical Staff states that the apartment measures approximately 850 square feet. DHCA indicates that the proposed accessory apartment contains approximately “754 square feet of area” and that the bedroom measures approximately 112 square feet.³ See Ex. 14.

The main entrance to the apartment is located on the side of the house, behind the garage and caddy-corner to a door leading into a storage area. As may be seen in the photograph on page 3 above, the door into the apartment looks like a secondary entrance to the house. The apartment also has a back entrance onto a ground-floor patio in the backyard. The Petitioner represents that her driveway, which measures 20 feet by 28 feet, can accommodate approximately eight cars. She also intends to make one of the two spaces in the garage available to her tenant(s). In addition, parking is permitted on both sides of Billington Road. Technical Staff opined that adequate parking is available.

III. SUMMARY OF TESTIMONY

Ronald Feaster, Housing Code Inspector for DHCA, testified at the hearing that, as noted in his inspection report (Ex. 14), the accessory apartment proposed here is located behind the garage. He stated that neither of the two entrances to the proposed accessory apartment is visible from the street. Mr. Feaster reported that his inspection uncovered no building code violations. All of the interior construction was brand new, and the only unfinished items were a door and some shelves to be put up in

³ DHCA normally provides a measurement of habitable space in its reports. It is not clear in this case whether the figure of 754 square feet refers to habitable space or to floor area. The undersigned believes that this relatively minor discrepancy is not material to the outcome of the special exception petition, although DHCA may wish to clarify this point if it issues a license.

the laundry area, and connecting the range to make it operational. Mr. Feaster confirmed the apartment's floor plan and its two entrances. He also reiterated the statement in his report that occupancy of the apartment is limited to two persons.

Petitioner Connie Snyder testified on behalf of the petition. She adopted the Staff Report as part of her evidence in this case. Ms. Snyder acknowledged the two-person occupancy limit that Mr. Feaster described, but asked if it would be possible at some point to have three tenants in the apartment. Noting that the kitchen and family room areas are part of one large room, she suggested that she might like to install a folding wall between the kitchen area and the family room area to create a second bedroom. She envisioned this folding wall as something that would extend from floor to ceiling and from wall to wall, creating a private sleeping space. DHCA's Kevin Martell testified, in response, that such an arrangement could conceivably be done, but he is not sure whether a folding wall is permissible for a bedroom. He indicated that privacy is an important element for a bedroom. DHCA would have to see a drawing of such a proposal and give it careful consideration. Faced with the prospect of delaying the completion of the hearing and a decision on her petition if she changed her proposal, Ms. Snyder elected to leave her proposal as submitted, stating that she will return for a modification at a later date if she wants to create a second bedroom.

Ms. Snyder testified that she is the only permanent resident of the main dwelling unit. She has a roommate for a few weeks who is living there temporarily. Ms. Snyder confirmed her understanding that the Zoning Ordinance would not allow her to have a permanent roommate in the main portion of the dwelling and rent out the accessory apartment at the same time, because an accessory apartment cannot be located on a lot that is occupied by a family of unrelated persons. She also confirmed that she has no other residential uses in her home, that the apartment would have the same street address as the house and that she is not permitted to receive compensation

for more than one dwelling unit in her home. Ms. Snyder stated that the requirement that she live in the home at least six months of every twelve is consistent with her intentions. Finally, she testified that she plans to share the two-car garage with her tenants.

IV. CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because there may be locations where it is not appropriate. The zoning statute establishes both general and specific standards for special exceptions, and the petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Based on the testimony and evidence of record, I conclude that the instant petition meets the general and specific requirements for the proposed use, with the conditions recommended at the conclusion of this report. The Petitioner has agreed to comply with these conditions.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.21. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics

not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” Id. Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed special exception that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed special exception that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff in this case identified the following as physical and operational characteristics necessarily associated with an accessory apartment: the existence of the apartment as a separate entity from the main living unit but sharing a party wall with it; the provision within the apartment of the necessary facilities, spaces and floor area to qualify as habitable space under the Building Code; a separate entrance and walkway and sufficient lighting; sufficient parking; the existence of an additional household on the site with resulting additional activity including more use of outdoor space and more pedestrian, traffic and parking activity; and the potential for additional noise. Technical Staff concluded and the Hearing Examiner agrees that the accessory apartment proposed in this case has no unusual physical or operational characteristics, nor are there any unusual site characteristics that result in adverse effects, therefore the proposed use would have no non-inherent adverse effects.

B. General Conditions

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report, the DHCA inspection report, and the Petitioner's testimony and written submissions provide ample evidence that the general standards would be satisfied in this case.

Sec. 59-G-1.21. General conditions.

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.

Conclusion: An accessory apartment is a permissible special exception in the R-90 Zone.

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed special exception would comply with the standards and requirements set forth for the use in Code §59-G-2.00, as detailed in Part IV.C. below.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a

decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The evidence supports Technical Staff's finding that the proposed special exception would be consistent with the objectives of the *White Oak Master Plan*. The Master Plan supports the existing zoning, which allows accessory apartments by special exception.

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

Conclusion: The proposed special exception would be in harmony with the general character of the neighborhood considering the cited factors. It would have little impact on population density; it would not result in any changes to the exterior of the house; it would result in a modest increase in intensity of use of the property with no change in the character of such use; it would result in only a minimal increase in vehicular traffic; the site has more than adequate parking on-site and in the street; and no accessory apartments have been identified in the general neighborhood.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence demonstrates that due to the modest impacts of the proposed accessory apartment, the special exception would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects

the use might have if established elsewhere in the zone.

Conclusion: Based on the nature of the use, the special exception would cause no objectionable noise, vibrations, fumes, odors, dust, or physical activity. The Hearing Examiner agrees with Technical Staff's conclusion that the exterior lighting is adequate but not obtrusive, and does not create any objectionable illumination or glare.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

Conclusion: Only one existing special exception has been identified in the general neighborhood. The evidence supports Technical Staff's conclusion that the proposed accessory apartment would not increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely. Moreover, given that the proposed use is residential in nature, it would be very unlikely to alter the predominantly residential nature of the area.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

Conclusion: The Hearing Examiner accepts Technical Staff's conclusion that the proposed special exception would be adequately served by the specified public services and facilities.

- (i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

Conclusion: No subdivision approval would be required. Technical Staff reports that the proposed accessory apartment would generate one additional vehicle trip during the peak hours, far below the 50-trip threshold that triggers Local Area Transportation Review. For purposes of Policy Area Transportation Review, the subject property is located within the Fairland/White Oak policy area, which had negative housing capacity under the Annual Growth Policy as of March 30, 2004. However, the proposed special exception would be considered to have de minimus impacts, allowing it to satisfy Policy Area Transportation Review.

- (ii) With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Conclusion: The evidence of record supports the finding that the proposed use would have no detrimental effect on the safety of vehicular or pedestrian traffic.

C. Specific Standards

The memorandum submitted by DHCA (Ex. 14), the Staff Report (Ex. 15) and the Petitioner's testimony and written submissions provide sufficient evidence that the specific standards set forth in Section 59-G-2.00 are satisfied in this case, as described below.

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.

Conclusion: Only one accessory apartment is proposed.

- (2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:

- (i) The lot is 2 acres or more in size; and
- (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.

Conclusion: The apartment shares one eight-foot wall with the main dwelling unit.

- (3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.

Conclusion: No addition or extension of the main dwelling is proposed.

- (4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.

Conclusion: The evidence indicates that the dwelling at issue was built in either 1960 (per Technical Staff and the Petitioner) or 1965 (per DHCA testimony).

- (5) The accessory apartment must not be located on a lot:

- (i) That is occupied by a family of unrelated persons; or
- (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or
- (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.

Conclusion: The Petitioner is the sole permanent occupant of the main dwelling unit. The accessory apartment is not yet occupied, and no other residential uses exist on the site.

- (6) Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.

Conclusion: The evidence supports the conclusion that the single-family appearance of the dwelling is unaffected by the entrances to the accessory apartment. The main apartment entrance has the appearance of a secondary entrance into the home. The back entrance is not visible from the street and has the appearance of a patio door.

- (7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.

Conclusion: No changes to the exterior of the building are currently planned in connection with this accessory apartment.

- (8) The accessory apartment must have the same street address (house number) as the main dwelling.

Conclusion: The accessory apartment will have the same address as the main dwelling.

- (9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.

Conclusion: The accessory apartment is clearly subordinate to the main dwelling, as it occupies approximately 850 square feet in a building that measures more than 2,000 square feet.

59-G § 2.00(b) Ownership Requirements

- (1) –The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.

Conclusion: The Petitioner plans to live in the main dwelling unit permanently.

- (2) – Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.

Conclusion: The Petitioner submitted written documentation indicating that she and her late husband acquired the subject property in March 1996. See Ex. 13.

- (3) Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.

Conclusion: The Petitioner will receive compensation for only one dwelling unit.

- (4) For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.

Conclusion: The Petitioner is the owner of the property.

- (5) The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.

Conclusion: Not applicable

59-G § 2.00(c) Land Use Requirements

(1) The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.

Conclusion: The subject lot is approximately 15,035 square feet in size.

As detailed in the Staff Report on page 5, the subject property complies with all development standards of the R-90 Zone, with the exception of one street setback for which a variance was obtained some years ago.

(2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use (see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).

Conclusion: The fact that no existing accessory apartments have been identified in the neighborhood of the subject property supports the conclusion that this special exception, if granted, will not result in an excessive concentration of similar uses in the general neighborhood.

(3) Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:

- (i) More spaces are required to supplement on-street parking;
- or
- (ii) Adequate on-street parking permits fewer off-street spaces.

Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.

Conclusion: The Hearing Examiner agrees with Technical Staff's conclusion that between the garage, the driveway and on-street parking spaces, the subject property has more than adequate parking for the use.

D. Additional Applicable Standards

In addition to complying with the zoning requirements set forth in Chapter 59-G, an accessory apartment must be approved for habitation by the Department of Housing and Community Affairs. In this case Mr. Feaster, testifying for DHCA, found that the only step necessary for the proposed apartment to meet all applicable requirements is to connect the range to make it operational. This requirement is reflected in a recommended condition of approval.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that Petition No. S-2606, for a special exception to permit an accessory apartment use in a single-family residential structure located at 12600 Billington Road, Silver Spring, be **GRANTED**, with the following conditions:

1. The Petitioner is bound by her testimony and exhibits of record.
2. The accessory apartment may be inhabited by no more than two persons.
3. The range/stove top must be connected and operational.

Dated: June 18, 2004

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner